



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CORPORATE REGULATION—AN ADMINISTRATIVE OFFICE

BY HERBERT KNOX SMITH,
Commissioner of Corporations, Washington.

We can take the years 1887, when the Interstate Commerce Commission was first established, and 1890, when the Sherman act was passed, as the beginning of our present policy, or lack of policy, on the corporate problem. One negative fact stands first. Although more than twenty years have elapsed, we have substantially failed to establish any constructive policy as to industrial corporations. The Sherman Anti-Trust Law represents, with one exception, which I shall mention later, that entire policy. That law is, of course, not constructive. Its primary object is the prevention of monopoly and of certain kinds of combination. It is enforced entirely by judicial procedure, partly under the strict and narrow forms of criminal law.

The remarkable corporate concentration that has taken place in these twenty years has, of course, had good as well as bad results. Otherwise it could not have reached its present dimensions. But thus far our non-constructive policy has in the main failed to segregate the good from the evil. It has simply attacked the evil by attacking the whole process, without any attempt to separate and preserve the good.

It is not necessary to enlarge on the absurdity of attempting to regulate modern industrial corporations exclusively through the courts. The court is a means of settling a specific question, usually of private property right. It acts only on particular cases; it is subject to highly specialized procedure; its methods are necessarily slow; its training is legal, and it applies legal, not economic or financial, principles. Finally, its processes are in most cases remedial after the act, and not preventive before the act.

This striking gap in our public policy as to industrial corporations almost bespeaks its own remedy. What we must have is a federal administrative office supervising industrial corporations, analogous in some degree to the Interstate Commerce Commission which deals with railroads. The machinery of modern business is excessively

complex. To cope with the changing problems raised by it requires an organization which shall be permanent, flexible, composed of trained experts, having available the accumulated knowledge of continuous service and investigation, capable of co-operation, of prevention as well as cure, and, above all, furnishing effective publicity. Only administrative action can secure such results.

Thus far I have stated theory. I now propose to describe a concrete "experiment in statescraft," a piece of laboratory work upon which I base my theory, and with which I am familiar, by eight years of personal association. I have already said that there was one exception in our lack of constructive legislation on industrial corporations. That exception is the Bureau of Corporations, and it is the "experiment" whose results I propose to outline. It was organized in 1903. Its sole powers are the investigation of industrial corporations engaged in interstate commerce and the reporting of the results to the President, through whom they are made public. It has no power to enforce the Sherman law, or to direct the course of business, or to issue orders, or to grant redress. It is solely an educational and publicity agency.

The Bureau takes up certain specific staple industries or great corporations; assembles, from all over the country, the multitudinous facts that go to make up their business history; examines them by the most exhaustive investigation, much as the scientist studies an organism under the microscope; digests those facts into logical, impartial and clear reports, and makes those reports public.

Its organization corresponds to its work. Apart from certain clerical and purely administrative divisions, the 125 men in the Bureau are divided according to the investigations then pending. For example, at present there is a steel division, lumber division, waterways division, international harvester division, tobacco division, etc. At the head of each of these divisions is a man of high rank, an economist of excellent academic training, and usually also with a long subordinate experience in the Bureau. Under him are assistant economists, statisticians, accountants, field men, and, if needed, attorneys. He is responsible for outlining the scope of the investigation, assembling the facts, and writing the report so that it shall show not only the facts but the significant permanent tendencies and conclusions. He consults the commissioner continually during the process. The commissioner then revises this report

with the utmost care, concerning himself especially with the soundness of the conclusions reached and the effectiveness of their presentation.

I have said that the Bureau is primarily an agency of publicity. It is more than that; it is the agency of efficient publicity. We recognize thoroughly that the "man in the street" will not read 300-page reports. Our work, however, depends on that man, because he represents public opinion, and public opinion is the great force that we are trying to direct intelligently on modern business problems. Therefore, when any report is published, the essential facts and conclusions are digested into not over two thousand five hundred words, or about two columns of newspaper. It must be in such shape that the papers will print it as news and the citizen will read and understand it. This digest is sent out through the press associations, under "release," so that it is published on a given day all over the country. The result is that while possibly two thousand people, mostly technical experts or economists, will read the whole report, several millions will at least see the headlines of the digest, and a large proportion of them will get the essential facts. The great facts of business thus reach the citizen and voter in available form.

Now for the results. We have found that public opinion, thus intelligently applied, when based on concrete facts, is the most effective reforming force against industrial evils. The Bureau published a report in 1906 setting out a great system of railway rebates and discriminations enjoyed by the Standard Oil Company, every fact being verified from railroad records. Within six months of that publication the railroads concerned cancelled every rate criticised as illegal in that report, and the railroad map was wiped cleaner of rebates than it ever has been in the last generation. In 1908 and 1909 the Bureau published a report criticising sharply certain methods of the two great cotton exchanges, New Orleans and New York. The New Orleans Exchange at once entered into co-operation with the Bureau, and, after conference, voluntarily adopted certain very important improvements in its methods. The New York Cotton Exchange, after two years, has been forced into considerable, though by no means complete, compliance with the recommendations of the report. You will observe that here the federal government had absolutely no control over these intrastate organizations. The operative force was simply publicity and co-operation.

Two reports have been issued by the Bureau on the "Tobacco Industry," and produced important reforms in competitive methods in the industry, testified to by many of the independent tobacco concerns. The Bureau has published three reports on "Transportation by Water." The one dealing with water terminals has especially had a very marked effect both on public opinion and in local controversies on this subject. It was used as a campaign document in establishing the Port Commission of Seattle, Washington, which is aimed at a modern organization of that port, and it has been referred to by the courts as authoritative in setting forth certain principles of relationship between waterways and water terminals. The Bureau has published three reports on "Taxation of Corporations by the States," which have been widely used by state officials and by the special sessions of at least two state legislatures, called for the revising of state systems of taxation. In one state, whose taxation system was criticised in these reports, the special session of that legislature has made a complete revision of its taxation laws with express reference to the Bureau's report. The Bureau has also published two reports on the "Steel Industry." These have been followed by very tangible results, notably the cancellation by the United States Steel Corporation of its "Hill" ore lease, and the reduction of rates on its northern ore roads, both of which were the subject of especial criticism in the reports. Finally, in the proposed voluntary dissolution of the International Harvester Company, negotiations for which are now pending before the Department of Justice, the Bureau has been called upon largely by that department for information on the business facts and economic tendencies in that great industry, without which data no complete and effective dissolution could be worked out.

You will observe that these results have been accomplished by administrative action, by efficient publicity, through a trained force of specialists, whose permanent and continuous work is the handling of business facts and business problems.

Quod erat demonstrandum. In other words, it is submitted that this "experiment in statecraft" has justified, in actual practice, the principles that I first laid down in theory. The gap in our public policy must be filled in some such manner. If we are going to handle satisfactorily the vital problems of our day, which are economic, and which deal with the enormously complex, immediate, and

changing conditions of business machinery, we must have some permanent federal office, formed along the lines of the Bureau of Corporations, with considerable extension of its present scope and power. It must be organized for continuous consideration of these business problems, must have complete access to corporate records, receive constant reports from important corporations, and be charged with the duty of making public the essential facts thus ascertained. Consider what this will mean. It will mean the creation of a force of trained specialists, whose life work is to acquire and analyze impartial and accurate knowledge of this most difficult subject; the accumulation, in one reservoir, of the vast masses of business facts that constitute our problem, and the establishment through the years of advancing precedents and traditions of business standards and financial relationships. Again, such a system can be made the basis for such positive regulation of corporations as later may appear desirable.

There are now, broadly speaking, two schools of thought on the question of corporate regulation. One prefers to rely mainly on competition, and depends largely on the enforcement of anti-trust legislation. The other prefers to permit combination, and to regulate its operation by direct government intervention. For either of these two ideas the plan for an administrative office above outlined is immediately desirable and necessary, while it does not commit us finally to either policy.

Finally, and most important of all, such an administrative system provides for the education of the American public in the problems that they must collectively solve. Our experiment in a national democracy frankly depends on the education of the citizen, from the little red school-house up, his education for collective action toward a national end. We have no other salvation. It is a slow process; it has to be done from the ground up; its results do not appear day by day or year by year; but there is no substitute for it, and no quick panacea that can take its place. And this can be gotten, and can be gotten only through some such national administrative system as I have outlined.